

# VIRGINIA COMMISSION ON YOUTH

December 2, 2014

2:00 p.m.

House Room C

## MINUTES

### Attending:

Delegates Mark Keam, Christopher Peace, Richard P. Bell, Peter Farrell  
Senators Barbara Favola, Dave Marsden, Stephen Martin  
Citizen members Chuck Slemph, Deirdre Goldsmith

### Not Attending:

Citizen members Frank Royal

### Staff Attending

Amy Atkinson, Will Egen, Leah Mills, Chad Starzer

#### I. Call to Order and Opening Remarks

*Delegate Christopher K. Peace, Chair*

Delegate Peace welcomed everyone to the meeting. Delegate Peace thanked everyone for attending and asked that the members introduce themselves. During the course of the meeting, Delegate Peace asked that the members adjourn in memory of Dr. William Boshier, a friend of the Commission who had recently passed away. The Commission adopted this motion.

#### II. Election of Chair and Vice Chair

The *Code of Virginia* requires that the Commission on Youth elect a Chairman each year. The Chairmanship will take place following the meeting. Delegate Peace stated that nominations would be received for a Chairman and a Vice-Chair.

Senator Martin made a motion that the Commission leadership remain the same until after the 2015 General Assembly Session when this issue could be revisited in the spring. The members agreed and concurred with Senator Martin's motion.

#### III. 2014 Legislative Studies – Decision Matrix

**Court Appointed Attorneys in Child Welfare Cases – *Public comment will immediately follow***

At the November 17 meeting, Mr. Egen presented draft findings and recommendations for the Commission's Study on Court Appointed Attorneys in Child Welfare Cases. The Commission received one written public comment. After the presentation of the decision matrix, the Commission will receive public comment – two minutes per person. After public comment, the Commission members will vote.

*The draft recommendations, along with the public comment considered by the Commission, can be accessed on the [December 2<sup>nd</sup> decision matrix](#). The adopted recommendations can also be viewed on the [Adopted Decision Matrix](#).*

Mr. Egen noted that the Findings and Recommendations were presented and discussed at the Commission's November 17 meeting. Mr. Egen reviewed the Draft Recommendations for Finding 1, which detailed the need for an improved compensation structure. Mr. Egen explained that Recommendation 2 allowed court appointed counsel in child welfare cases to submit a waiver application for additional compensation above the current cap in termination of parental rights (TPR). He noted staff included a revision to Recommendation 2 based on public comment. Revised Recommendation 2 would allow court-appointed counsel for parents in child welfare cases to submit a waiver application for additional compensation above the current cap for all stages of a child dependency case.

Mr. Egen stated that the Virginia Poverty Law Center supported this recommendation. The reimbursement rates for court appointed attorneys for parents in child welfare cases were low; attorneys actually perceived these cases as "pro bono". Delegate Farrell asked whether waivers were submitted based upon the guardian ad litem system compensation structure. Mr. Egen noted that the attorney was compensated based upon what is submitted to the judge and on the number of hours spent on a case. The judge has the authority to approve or disapprove. Senator Favola asked whether the staff considered a "cap for hour" when a waiver is submitted, this would enable the judge to approve a higher hourly rate. Mr. Egen noted that, while the judge has discretion, they are unable to approve funding freely.

Mr. Slemp stated that he practiced in this area of law and that there was a need for this type of solution. Adequate representation as a parent in all stages of the child welfare process will aid in achieving permanency. The most critical work in these cases occurs at the earlier phases of these cases. Mr. Slemp noted that judges reviewed and granted waivers based upon the amount of work and competence of the attorney. Some cases do not require a lot of work but most do because parents are contacting counsel on a daily basis. Review of discovery and meeting witnesses take time. Mr. Slemp said if the waiver is set up and structured after the General District Court criminal waiver, which is capped at \$120 without approval of Supreme Court, it would allow for some additional compensation. Senator Favola noted that there was much discretion in these waivers. Mr. Slemp concurred.

Ms. Lelia Hopper noted that the waiver system seems open ended; however, the General Assembly appropriates funding for these waivers, once this funding is gone, additional requests cannot be paid. The Supreme Court and the judges manage the funding for waivers, but currently this only applies to criminal cases. The current amount is \$4.2 million. Ms. Hopper noted that the Office of the Executive Secretary was in the process of notifying judges that this year's expenditures were higher than anticipated. In order to have a waiver for TPR cases, additional funding would be necessary to cover waivers for these cases. Delegate Farrell stated that additional funding was critical and asked whether existing funding was from the state general fund. Ms. Hopper stated that these expenditures were reimbursed from the criminal fund, which was state general fund dollars. It is sum-sufficient because individuals are entitled to counsel in all of these cases. Senator Marsden expressed concern that any changes may place additional stress on the existing system. Mr. Slemp stated that these cases were not easy; TPR cases could last for multiple days. This is particularly difficult because parents and children suffer when children linger in foster care. Mr. Egen stated that Recommendation 1 was more costly than Recommendation 2.

For Finding 2, Mr. Egen stated that the Virginia Court Improvement Program provides training for court-appointed counsel for parents in child welfare cases and has done so most recently in 2012. The main concern with this Finding is requiring additional training. Attorneys already view these types of cases as “pro bono”; the Commission does not want to adopt policies that may encourage attorneys to stop accepting these appointments. This may occur if additional training becomes mandatory.

Ms. Goldsmith asked whether training could be provided through continuing legal education (CLE) requirements. Mr. Egen stated that Recommendation 1 would count to CLE requirements. Delegate Peace stated CLEs were a vehicle and that guardians ad litem were required to have a certain number and type of CLE hours. Delegate Farrell inquired about the cost. Mr. Slemp stated that most court-appointed counsel were also guardians ad litem and already receive this type of training.

For Finding 1, Senator Favola expressed support for Recommendation 2 because it was less costly. Mr. Slemp stated his belief that a waiver would have value for early stages of a case because these stages were critical to “making” or “breaking a case. Waivers could be more helpful earlier in the process. Delegate Farrell expressed the opinion that perhaps it would be more cost effective to allow for waivers in the beginning of the case, rather than waiting until the later stages. Mr. Slemp stated that in his general district court, for criminal cases where waiver requests were entertained, attorneys must submit documentation detailing additional services.

The Commission received public comment. Christie Marra with the Virginia Poverty Law Center expressed support for Recommendation 2, and for allowing fee cap waivers for all stages of a child dependency case. The VPLC emphasized that the most critical work in these cases occurs preparing for and attending these earlier hearings where decisions are made regarding the placement of the child, visitation, and services for the parent.

For Finding 1, Mr. Slemp moved that the Commission adopted Revised Recommendation 2. Delegate Farrell seconded the motion. After discussion, the Commission adopted Revised Recommendation 2. Delegate Peace abstained from the vote.

For Finding 2, Mr. Slemp stated his belief that the Recommendations were not necessary. Delegate Farrell moved that the Recommendations for Finding 2 be passed by and the Commission continue to work with the Court Improvement Program on this issue. The Commission adopted this motion and no Recommendations were adopted for Finding 2. Delegate Peace abstained from the vote.

The Recommendation adopted by the Commission is listed below.

1. Allow court-appointed counsel for parents in child welfare cases to submit a waiver application for additional compensation above the current cap for all stages of a child dependency case.

**IV. Virginia Department of Juvenile Justice  
Andrew K. Block, Jr., Director  
Department of Juvenile Justice**

Delegate Peace introduced Mr. Block and stated that he was appointed as Director of the Department of Juvenile Justice in the spring of 2014. Prior to this appointment, he served as an Associate Professor and Director of the Child Advocacy Clinic at University of Virginia School of Law and was the founder of JustChildren. Delegate Peace welcomed Director Block and thanked him for sharing several of the initiatives going on at the Department of Juvenile Justice (DJJ).

Director Block provided an overview of the juvenile justice system in Virginia. He noted there were now 34 court service units (CSUs) that provided domestic relations and delinquency intake services, and probation and parole supervision. There were also 24 locally and regionally operated detention centers that provide pre- and post-dispositional placements. There are also three juvenile correctional centers (JCCs), including the Reception and Diagnostic Center (RDC).

In fiscal year 2014, there was an average of 5,941 juveniles per day under DJJ supervision (probation, direct care, or parole). Of these, 5,060 were on active probation supervision, 597 were in direct care, and 284 were on active parole supervision. The population has decreased by 38 percent since 2005. Per capita expenditures for direct care bed costs exceeded \$150,000.

The average age of admission for first behavior problems was 11.8 and age at current commitment was 16.3. The leading family risk factors are parental criminal activity, parent incarceration, parent death or abandonment, and parent substance abuse. For juveniles admitted, 43 percent were designated as special education, 80 percent had substantial school attendance problems in the community, and 78 percent had substantial school behavior problems in the community. Director Block also outlined recidivism rates.

Director Block discussed challenges confronted by juvenile offenders. He stated that these youth were typically known to the system well before their committing offense and usually had significant trauma exposure. These youth were not on track for educational success and also had significant mental and behavioral health challenges.

Director Block outlined several recent DJJ initiatives, including the model social history, which was a recommendation of the Commission on Youth. The model social history provides a standardized format for consistent assessment and content. It also assesses risk to re-offend, criminogenic needs, and protective factors. The model social history highlights a juvenile's history of trauma and identifies services and resources that have been exhausted and what community resources are available for consideration at disposition. Director Block noted that the model social history was adopted on October 1. The Department trained over 600 staff and conducted 22 regional hearings. Over 100 staff received trauma-informed training conducted by the Department of Criminal Justice Services.

Director Block referenced a study that showed increasing family contact reduced troublesome behaviors. Ms. Goldsmith asked about low-risk youth and whether involvement with the juvenile justice system increases the likelihood of future juvenile justice involvement. Senator Favola asked whether the Department followed up to assess service planning for juveniles. Director Block stated that almost all juveniles were placed on probation or parole. The Department was looking at what works in terms of successful reentry. Delegate Farrell asked about sentencing. Director Block stated

that there were two types of sentences, determinate and indeterminate. The average length of stay was 16 months.

Delegate Peace thanked Director Block for the informative presentation.

**V. Three Branch Institute on Child Social and Emotional Well-Being**  
**Margaret Schultze, Commissioner**  
**Virginia Department of Social Services**

**H. Bryan Tomlinson, II, Director**  
**Division of Health Care Services**  
**Department of Medical Assistance Services**

Delegate Peace introduced Commissioner Margaret Schultze of the Department of Social Services. He noted that Commissioner Schultze oversees both programmatic and administrative functions within the Virginia Department of Social Services, one of the largest Commonwealth agencies. Commissioner Schultze will be presenting with Mr. Bryan Tomlinson of the Department of Medical Assistance Services, to discuss the work of the Three Branch Institute. The Commission on Youth had also participated in this initiative. Delegate Peace thanked Delegates Bell and Farrell, Senator Favola and Chuck Slep for serving on this very important Institute. This initiative truly gets to the heart of what is important for children served in foster care – improving their wellbeing.

Commissioner Schultze provided an overview of Virginia's Three Branch Initiative. The purpose of the Virginia Three Branch Initiative was to:

- Measure and improve social and emotional well-being of children in foster care;
- Align work of executive, legislative, judicial branches;
- Consider evidence-based, research informed strategies;
- Enhance existing efforts through cross-system collaboration;
- Leverage resources to fund innovative practices; and
- Develop and implement Learning Collaboratives to integrate the work.

Commissioner Schultze shared the three strategies developed to accomplish these goals. Strategy 1 is to manage by data to improve health and behavioral health outcomes. Strategy 2 is to manage by data to improve educational outcomes. Strategy 3 is to improve appropriate and effective use of psychotropic medications for children in foster care and implement strategies for consent and monitoring. Since 2013, well-being activities have been incorporated into foster care guidance and well-being outcomes have been included in the Department's automated system. Well-being sections and outcomes have been included in the Department's Five-Year Plan. In addition, over 95 percent of all children in foster care are now in managed care. This allows for improved access to health care providers, coordination of health care services, case management, targeted services for chronic conditions, and a 24-hour nurse advice line.

Since July 2013, there has been prescription rate analysis conducted to assess medication trends of foster care youth. Additional work has taken place on data sharing on foster care youth. The Department intends to move forward with this work by establishing the Learning Collaborative Series (VA LC Series) which will bring together participant teams to learn about and apply innovative practices and strategies to improve their ability to support abused and neglected children and their families.

In 2014, Commissioner Schultze noted that the Department held Permanency Values Training in each of the five regions for local department of social services' staff, private providers, court staff, resource families and community partners. In 2015, the Department will work with local agencies to plan and implement Skills Training and Permanency Round Tables in each region.

Commissioner Schultze stated that funding for the original Three Branch grant was scheduled to end in 2014. Casey Family Programs has agreed to provide additional funds to continue the Three Branch work through the end of 2015. There are also opportunities to collaborate with the Children's Cabinet and Commonwealth Council on Childhood Success to tackle issues facing foster children. One such partnership is with DJJ in tackling the trauma and unique issues of "dually involved" youth.

Commissioner Schultze shared a public service announcement (PSA) on foster care and adoption. The members agreed it was extremely touching. Delegate Peace asked that she send the Commission the link so the PSA could be shared on the Commission's website.

Mr. Tomlinson provided an overview of the Department of Medical Assistance Services' foster care and Medicaid managed care initiative. He noted that, prior to the pilot program; foster care youth were indistinguishable from other Medicaid youth.

He reviewed the foster care and adoption assistance youth by region and stated about 14 percent were not included in managed care because they were in a hospital or institution. It was very complex to move 10,000 youth into managed care. He reviewed the top ten managed care foster care/behavioral health diagnoses by age and stated that, generally, adoption assistance youth were more similar to other Medicaid youth. Effective January 1, 2015, mental health medications will be included on the preferred drug list. Mr. Tomlinson stated that there had been strong collaboration with the Department, managed care organizations, the Department of Social Services, and local agencies. He also outlined the Managed Care Quality Collaborative to evaluate health outcomes for foster care children. The Collaborative would focus on improving care for this special population, ensure that Health Risk Assessments were completed timely, and ensure that these youth were being seen by a Primary Care Physician (PCP) within first year of care.

Delegate Farrell asked if managed care improved quality of care and Mr. Tomlinson stated that was true. Senator Favola noted that contracted with managed care organizations could look at ways to ensure that medications would be prescribed only after other treatments were tried first. Senator Favola stated that youth in managed care must be served; it was an obligation. Mr. Slemp stated that it took him four hours to travel to Roanoke so it would be helpful to improve services. Delegate Peace inquired about medical compliance. Mr. Tomlinson stated that the health plans manage the utilization of drugs and that the important component was stabilizing the youth. Delegate Farrell asked about data and Mr. Tomlinson stated that the Department was evaluating data currently.

Delegate Peace thanked Mr. Tomlinson for his presentation.

**VI. The Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities (HJR 196, 2014)**



**Amy Atkinson, Executive Director  
Virginia Commission on Youth**

Delegate Peace stated that the Commission received this two-year study during the 2014 General Assembly Session. At the November meeting, the Commission received a presentation from Susie Clare, Executive Director of the Comprehensive Services Act. Today, Ms. Atkinson will give us a “year-one” update.

Ms. Atkinson stated that House Joint Resolution 196 (Adams) directed the Commission on Youth (COY) to:

- examine the use of Comprehensive Services Act for At-Risk Youth and Families (CSA) and Medicaid funds for private day and private residential special education placements;
- gather local and statewide data when youth are placed in these placements;
- determine the feasibility and cost-effectiveness of more integrated alternatives to provide special education services to students including students with intellectual and developmental disabilities currently in segregated settings; and
- consider any other matters appropriate to meet the objectives of this study.

Ms. Atkinson stated that the Commission is to complete its meetings by November of 2014 the first year and by November 2015 during the second year and report recommendations prior to the 2016 General Assembly Session.

Ms. Atkinson discussed special education requirements pursuant to the Individuals with Disabilities Education Act (IDEA). IDEA guarantees a free appropriate public education (FAPE) to all eligible children with disabilities. IDEA requires that students be provided special education services in the least restrictive environment (LRE) and that students with an Individualized Educational Program (IEP) not be unnecessarily segregated from nondisabled students, including those receiving educational services in private day and private residential schools or facilities.

State general funds support special education services in public school settings. Medicaid funds may be utilized to support private residential placements, but only for those youth with mental health treatment needs that qualify for residential services. CSA funds may also be used to provide services for at-risk youth and their families, including private day school and residential placements for the purposes of special education. Local interagency teams are responsible for managing CSA funds and also plan and oversee services to youth.

Ms. Atkinson highlighted commonly used terms in special education and associated with the Comprehensive Services Act. She reviewed federal and state laws and regulations. Laws/Regulations/Policy. The important key to this study is that IDEA requires schools to provide FAPE in the LRE to students with disabilities.

Ms. Atkinson stated that CSA establishes a single state pool of funds to purchase services for at risk youth and their families. Youth who are special education eligible and have an IEP requiring they receive education in a private day or residential school setting are eligible for CSA funding.

Ms. Atkinson informed the Commission members on staffs' activities during year one of the study. She also outlined the plan for year two. Delegate Peace thanked Ms. Atkinson for her presentation.

Delegate Peace stated that, following the November 17<sup>th</sup> meeting, Commission staff was directed to contact the impacted agencies to discuss resources necessary to implement the adopted recommendations for Early Childhood Education. The Commission received additional input on one of the adopted recommendations. Recommended changes are offered at the suggestion of the impacted agencies. Delegate Peace noted that these changes were technical and included in the members' folders. The new recommendation severs the adopted recommendation into three separate recommendations to be shared with the three impacted agencies/organizations.

The Recommendation's new language is outlined below.

1. *Request the Virginia Department of Education's Office of Humanities and Early Childhood participate with the Virginia Department of Social Services and the Virginia Early Childhood Foundation (VECF) to convene an interagency, cross-sector workgroup to be facilitated by the VECF. The workgroup shall develop a competency-based professional development framework to inform the requirements and guidance for pre-service education, in-service education, and training for early learning practitioners in Virginia's early learning settings. In developing the framework, the workgroup will review the following:*
  - *Professional support and in-service training proven to promote gains in children's social and academic development;*
  - *Current professional development standards, such as competencies for practitioners, trainers, and technical assistance providers; career pathways; trainer and training approval systems; technical assistance and mentoring/coaching programs, training programs that lead to credentials and certifications;*
  - *Virginia's Quality Indicators for Responsive Teaching; Creating a High Quality Learning Environment to ensure that the document supports teacher-child interactions and personal and social development;*
  - *Efforts to build capacity with private partners that emphasize hiring teachers with such training;*
  - *Revisions to Virginia's Star Quality Standards which emphasize elements that demonstrate success including teacher preparation/professional development versus structural and/or physical plan components; and*
  - *Other relevant research-based information.**The workgroup shall make a final report on its activities to the Virginia Commission on Youth prior to the 2016 General Assembly Session.*
2. *Request the Virginia Department of Social Services to continue to ensure compliance with federal childcare regulations and new federal rules that may be adopted. This would include provisions of the Child Care and Development Block Grant Act of 2014, signed into law by the President on November 19, 2014 as well as subsequent regulations that may be issued by the U. S. Office of Child Care.*
3. *Request the Commonwealth Council on Childhood Success to investigate the development of a child care system where all providers, including home-based providers, be required to obtain a child care license and present on its activities to the Commission on Youth prior to the 2016 General Assembly Session.*



Without objection, the Commission adopted the changes to this Recommendation by consensus vote.

The meeting adjourned at approximately 3:50 p.m.